

*025***United States District Court****for****Southern District of Ohio****Petition for Warrant or Summons for Offender Under Supervision**Name of Offender: **Otto Johnson**Case Number: **1:02CR00137**Name of Sentencing Judicial Officer: **The Honorable Herman J. Weber,
Senior United States District Judge**Date of Original Sentence: **September 17, 2003**Original Offense: **Possession with Intent to Distribute Marijuana, in violation of 21 U.S.C. § 841(a)(1)
and (b)(1)(D), a class D Felony.**Original Sentence: **15 months BOP confinement, 3 years supervised release, a \$2,000 fine, and a \$100
special assessment**Type of Supervision: **Supervised Release**Date Supervision Commenced: **August 13, 2004**Assistant U.S. Attorney: **Ralph W. Kohnen, esq.**Defense Attorney: **Gregory C. Cohen, esq.****PETITIONING THE COURT**

- ☒ To issue a warrant and toll the supervision time
☐ To issue a summons
☐ To grant an exception to revocation without a hearing.

The probation officer finds, under penalty of perjury, that probable cause to believe the defendant has violated one or more conditions of supervision exists:

Violation NumberNature of Noncompliance

#1

New Law Violation:

1) On August 20, 2004, Johnson was cited by the Cincinnati Police for Possession of Open Flask. Johnson paid out the citation, which is an admission of guilty.

The citation stated Johnson was in possession of an opened bottle of Alize Red Passion at approximately 10:15 am on August 21, 2004.

2) On September 21, 2004, Johnson was arrested for Excessively Loud Noises and driving Under Suspension by the Cincinnati Police. On September 21, 2004, at arraignment, Johnson waived counsel and pled guilty to both charges. He was sentenced on the Driving Under Suspension charge to a period of ten days confinement, which was suspended in lieu of a one year term of probation. Johnson was ordered to pay a \$20 fine and court costs for the Excessively Loud Noise charge.

The facts are Johnson was observed driving a vehicle at approximately 1:10 am, and had the car stereo playing excessively loud music. After the traffic

stop, the police found the Johnson was driving while under suspension.

3) On October 5, 2004, Johnson was arrested by the Cincinnati Police on the charge of Assault, a misdemeanor. The case is still currently pending in Hamilton County Municipal Court

The Complaint and Affidavit allege, on September 30, 2004, Johnson approached an individual named Larry DuBose Jr after DuBose had gotten off a metro bus in the Madisonville area. Johnson asked DuBose if he rode the bus Johnson's mother was on, and DuBose responded that he did. Johnson asked DuBose what he said to his mother, and DuBose told him. At that point, Johnson started beating DuBose with a handgun Johnson had in his possession.

It should be noted, this officer spoke with law enforcement in the Madisonville area about the incident, and was given a similar account. This officer received additional information that DuBose, while on the metro bus, was criticizing Johnson's recent behavior in the Madisonville area, and Johnson's mother was on the bus, and told Johnson what DuBose had said.

#2

Standard Condition: You shall not possess a firearm or destructive device and probation must be revoked for possession of a firearm;

On September 30, 2004, Johnson was in possession of a handgun, and used the handgun to assault an individual. Johnson was arrested on the charge of Assault by the Cincinnati Police on October 5, 2004 as a result of the incident.

It should be noted, 18 U.S.C. § 3583(g)(2) requires revocation for possession of a firearm.

#3

Condition #2: You shall report to the probation officer as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five days of each month;

On October 12, 2004, Johnson failed to report on his scheduled reporting appointment with this officer. Johnson did not call to try to reschedule the appointment. Johnson has had no contact with the U. S. Probation Office since September 27, 2004. In addition, Johnson failed to submit monthly supervision reports for the months of September, October and November 2004 as required as of the date of this petition.

#4

Condition #6: You shall notify the probation officer ten days prior to any change of residence or employment;

Upon release onto supervision, Johnson listed a residence of 5717 Islington Avenue, Cincinnati, Ohio 45227. He was living with his girlfriend, Nicole Warner. On November 17, 2004, this officer went to the residence, and spoke with Nicole Warner, who stated Johnson was not living there anymore, and that they were no longer in a relationship together. She stated she did not know where Johnson was living.

Johnson failed to notify this officer of his change in residence ten days prior to the change of residence as required. Johnson's current whereabouts is unknown.

#5

Condition #11: You shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

On September 21 and October 5, 2004, Johnson was arrested for new criminal conduct by the Cincinnati Police. Johnson failed to notify this officer of the contact with law enforcement within three days as required.

#6

Special Condition #1—The defendant shall undergo a substance abuse evaluation and, if directed by his probation officer, participate in program which may include testing to determine if the defendant has reverted to the use of drugs or alcohol.

Upon release onto supervision, this officer referred Johnson to the Crossroads Center for substance abuse treatment. He was also placed onto the random color code drug testing program operated by the U.S. Probation Office. Johnson stated he understood what was required for both programs.

On October 26, 2004, Johnson was unsuccessfully terminated from the Crossroads center program for non-attendance. He last attended a treatment session on September 7, 2004.

In addition, on October 10, October 12, October 18, October 27, November 10, November 16, November 26, and November 29, 2004, Johnson failed to provide urine specimens for the purposes of drug testing.

It should be noted, 18 U.S.C. § 3583(g)(3) requires revocation for failure to comply with drug testing.

U.S. Probation Officer Recommendation:

Johnson has not made himself available for supervision. Johnson has a history with the Court of not making himself available for supervision, as his bond was revoked when he failed to report for supervision through pretrial services. He has continuously been involved in criminal behavior since his release, and is alleged to have been in possession of a firearm, which poses a threat to the community. He failed to notify this officer of his change in residence, and his current whereabouts is unknown.

Based on these factors, this officer is respectfully recommending the Court issue a warrant for supervised release violation, and toll the supervision time.

PROB 12C
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4

The term of supervision should be

- ☒ Revoked.
☐ Extended for years, for a total term of years.
☐ Continued based upon the exception to revocation under 18 USC 3563(e) or 3583(d)
☐ The conditions of supervision should be modified as follows:


Respectfully submitted,

by


Robert C. Frommeyer Jr.
Senior U.S. Probation Officer
Date: December 6, 2004

Approved,

by


John C. Cole
Supervising U.S. Probation Officer
Date: 12-7-04

THE COURT ORDERS:

- ☐ No Action
☒ The Court finds that there is probable cause to believe the defendant has violated the conditions of his supervised release and orders the Issuance of a Warrant for his arrest and the supervision time be tolled.
☐ The Issuance of a Summons
☐ The Court finds the defendant can benefit from continued substance abuse treatment and grants an exception to revocation. The supervision term of the defendant is continued under all original terms and conditions.
☐ Other


Signature of Judicial OfficerDate
12/10/04